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ELIZABETH M. CHIPINSKI
Attorney

March 4, 1992

VIA FAX AND AIRBORNE EXPRESS

Ms. Judith R. Hykel
Assistant Regional Counsel (3RC23)
Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

Re: Notice of Violation and Proposed Civil Penalty
SPCC Docket #WV-89-009

Dear Ms. Hykel:

As we discussed on Monday of this week, I am submitting today a request for administrative hearing in the above matter. I appreciate your offer to ensure that the copy I am sending by facsimile reaches Ms. Guy, Regional Hearing Clerk, today. Originals of this request will be delivered to you and Ms. Guy tomorrow.

As mentioned in the request, we still remain hopeful that this matter will be resolved informally and await your response to our request for mitigation.

With regard to the appropriateness of the proposed penalty, we continue to believe that the compliance steps taken by the Company prior to receiving the Notice of Violation (Notice) as well as the additional enhancements made to the containment system which are unrelated to the issues at hand, warrant a substantial reduction in the proposed penalty. The provisions of 40 C.F.R. § 114.4(e) afford the Company the right to submit relevant material with regard to mitigation of the proposed penalty or bearing on its efforts to achieve compliance after notification of the violation. The Notice provides that the EPA Region III will consider mitigation if Respondent commits to expeditiously comply with the regulatory requirements of 40 C.F.R. Part 112 and thereafter so complies.

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PENNZOIL COMPANY

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Ms. Judith R. Hykel

-2-

March 4, 1992

In our case, compliance with the regulations was achieved before the Notice was received. Moreover, with respect to the integrity of the containment system, compliance was achieved on the Company's own initiative without the benefit of any communication by the inspector of his concerns in this area. Finally, as already stated, the facility expended a substantial sum of money in installing additional protections to the containment system which were not related to the issues at hand in this matter. The above information, which was not known to the Agency at the time it calculated the proposed penalty, should now, we believe, be the basis for reducing the proposed penalty. Moreover, when compared to cases where the respondent was advised at the time of the inspection of conditions which were of concern to the inspector and took action only after receipt of the Notice, the case at hand deserves a proportionally larger reduction in the penalty, as proposed in our mitigation request.

I appreciate your assistance in this matter and hope that you will give these penalty mitigation factors further consideration.

Sincerely,

Elizabeth M. Chapman

EMC:pp

Enclosure